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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,447	08/07/2006	Kaoru Takeo	4605-062316	9567
28289	7590	12/27/2011	EXAMINER	
THE WEBB LAW FIRM, P.C. ONE GATEWAY CENTER 420 FT. DUQUESNE BLVD, SUITE 1200 PITTSBURGH, PA 15222			KIRSCH, ANDREW THOMAS	
			ART UNIT	PAPER NUMBER
			3781	
			NOTIFICATION DATE	DELIVERY MODE
			12/27/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@webblaw.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/588,447	TAKEO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ANDREW T. KIRSCH	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 5) Claim(s) 1 and 2 is/are pending in the application.
  - 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) Claim(s) \_\_\_\_ is/are allowed.
- 7) Claim(s) 1 and 2 is/are rejected.
- 8) Claim(s) \_\_\_\_ is/are objected to.
- 9) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on 07 August 2006 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

1. The amendment filed 10/11/2011 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

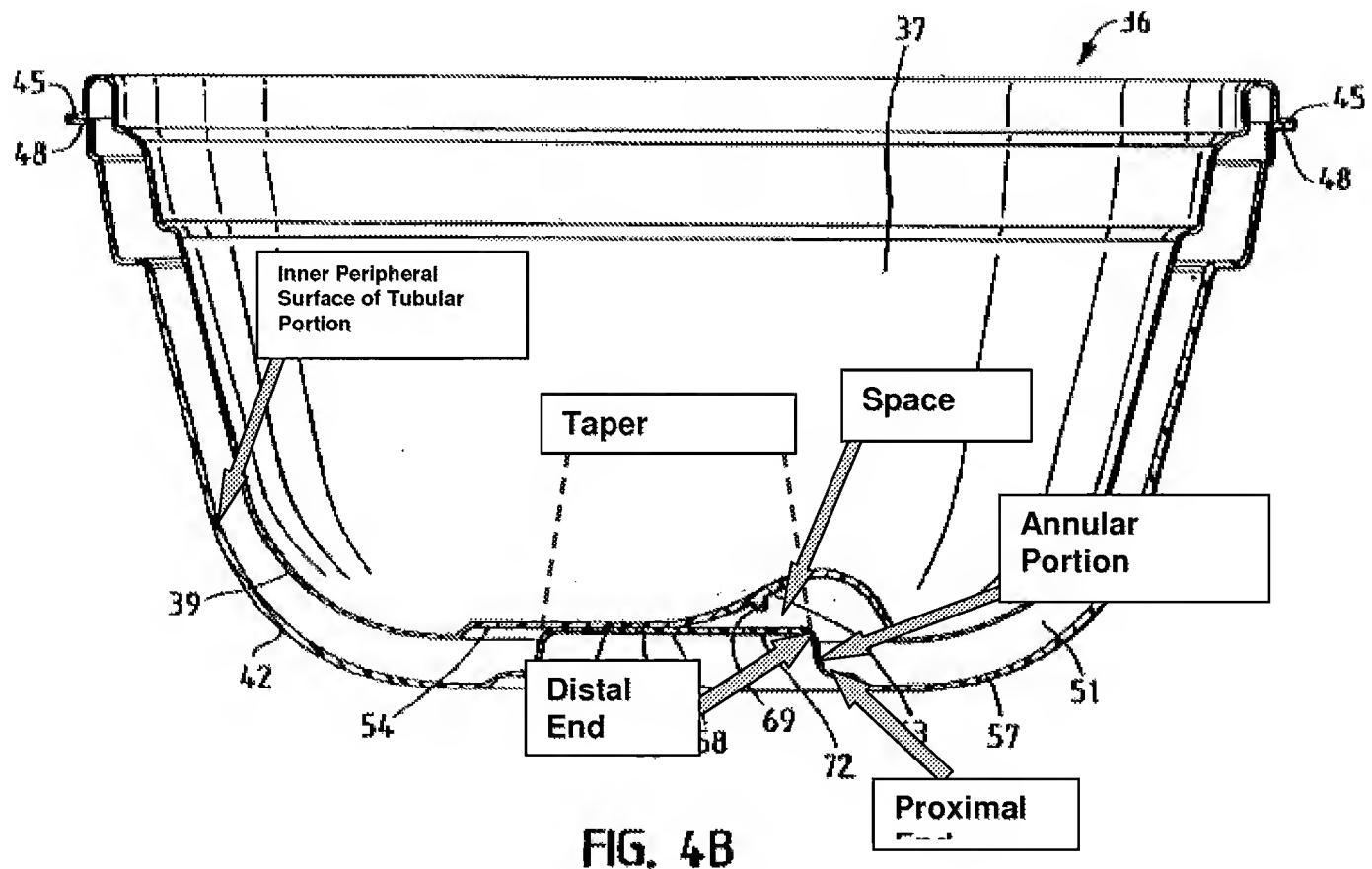
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dais et al. in view of Usui et al.

6. In re claim 1, with reference to Fig. 4b below, Dais et al. discloses: A heat insulating container comprising a container body (37) having a bottomed tubular shape and an outer shell (42) that covers a peripheral wall (39) of the container body (37) with a space (51) created between the peripheral wall (39) and the outer shell (42), the outer shell (42) including a tubular portion disposed opposite to the peripheral wall (39) of the container body and an annular portion (see Fig. 4b) extending from an opening edge (at 72) of a lower end of the tubular portion towards the inside of the tubular portion, and the annular portion (see Fig. 4b) having a distal end and a proximal end, in which the distal end is located farther from an inner peripheral surface (39) of the tubular portion than the proximal end is and the annular portion extends in an inclined orientation with respect to a peripheral wall of the tubular portion, and wherein the annular portion is formed so as to have the distal end with a space (at 72) to a bottom portion (63) of the container body so that air ("steam") within the space heated by heated food in the container body is communicated with the outside via a lower end opening (72) of the tubular portion (column 5, lines 35-39), and the annular portion is folded back towards an inside of the tubular portion and is tapered towards the distal end so as to be away from the inner peripheral surface of the tubular portion (see Fig. 4B).

In accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited

by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e the heat insulation container with the tapered annular portion, does not depend on its method of production, i.e. folding back of the annular portion. *In re Thorpe*, 227 USPQ 964, 966 (Federal Circuit 1985).



7. Dais et al. fails to disclose wherein the outer shell is formed by a foamed resin sheet having heat shrinkability.

8. However, with reference to Fig. 1(b) below, Usui et al. discloses a dual layered insulating container formed from a foamed resin sheet with an air space (5) which is formed of a foamed resin sheet (paragraph 0069).

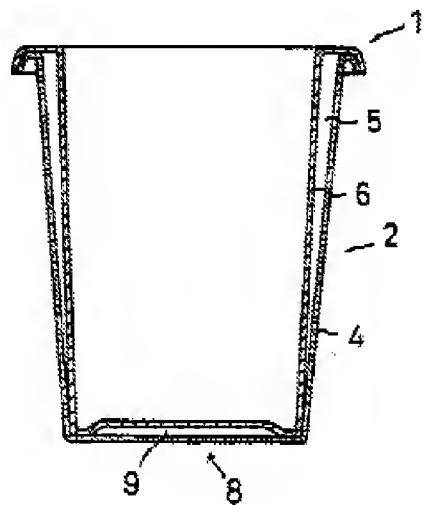


Figure 1 (b)

9. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized foamed resin for the composition of the container body of Dais et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Please note that in the instant application, page 12, line 4, applicant has not disclosed any criticality for the claimed limitations.

10. In re claim 2, with reference to the Figs. above, Dais et al. in view of Usui et al. discloses the claimed invention including wherein the outer shell (42) includes a

horizontal annular extension (58) that extends from the distal end of the annular portion towards the center of the tubular portion (see Fig. 4b).

***Response to Arguments***

11. Applicant's arguments filed 10/11/2011 have been fully considered but they are not persuasive.

12. Examiner apologizes for the misunderstanding regarding paragraph 12 of the previous action, which was meant to be a non-final rejection in response to the RCE filed 3/26/2010.

13. Applicant argues on page 4 of the Remarks that Dais discloses wherein the opening 72 of the container is closed, and therefore cannot pass air smoothly to the outside. However, as shown in Fig. 4B above, Dais discloses another configuration of the container wherein smooth air communication between the container body and shell is possible. This is the container in this open configuration is used to address the limitations which require the opening to communicate air therethrough.

14. In response to applicant's argument that the claimed apparatus is used as a heat insulating container, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

15. Applicant argues on page 4 of the Remarks that according to claim 1, the air within the space can communicate with the outside via the space and the end opening

without deforming or rupturing of the container. However, this limitation is not currently claimed.

***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-Th, 6:30am-5pm, off Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW T KIRSCH/  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781